Reserved.

COURT NO.3

Criminal Mis. Application No.997 of 2001.

Sri Pal Singh …….Applicant

Vs.

State of Uttranchal ……Respondents

Hon' ble Irshad Hussain, J.

This petition under section 482 of the Code of Criminal Procedure (hereinafter for short 'Code') has been filed against the order dated 22.12.1994, taking cognizance of the case; order dated 25.09.1996 thereby rejecting the contention of he petitioner that sanction under section 197 of the Code is necessary passed by the learned A.C.J.M., Roorkee and also the judgment and order dated 29.06.2001 passed by the learned Additional Sessions Judge/II R.T.C., Hardwar, whereby the order of learned A.C.J,M., Roorkee was held to be just and proper..

Heard Sri Rajendra Singh, kearned counsel for the petitioner and the learned A.G.A.

The acts of the case, briefly stated, are that an F.I.R. was lodged by a farmer alleging that Halka Ganna Gram Sewak and store supervisor Laksar, district Hardwar have taken the delivery of 26 bags of urea fertilizer on the basis of fictitious and forged pronote and bond on his behalf and they have misappropriate the said property. Case punishable under section 409,467,471, 120-B of the I.P.C. was registered and after investigation charge-sheet was submitted against

the petitioner who was then working as Halka Ganna Gram Sewak in that circle and store supervisor Sri Richhpal Singh, Learned magistrate concerned took cognizance and passed summoning order on 22.12.1994. The order of taking cognizance is also impugned in this petition.

Petitioner has been contending that he being a public servant was protected by the provisions of section 197 of the Code as no sanction was obtained to prosecute him for the offences alleged. The question was not initially considered by the learned Magistrate, whereupon a criminal miscellaneous application was filed in the High Court of Judicature at Allahabad in the year 1996. The same was numbered as 807 of 1996 and it was decided by order dated 13.03.1996, Annexure-8. The learned Magistrate was directed to first adjudicate upon the point as to whether or not the prosecution is bad in law for want of proper sanction. Consequently the question was considered on merit by the learned Magistrate who did not accept the contention of the petitioner by observing that since the petitioner as a public servant was not removable from his office only with the sanction of the State government, the prosecution for want of sanction in not bad in law. The order to this affect was passed on 25.09.1996 and the same is impugned in this petition.

Petitioner thereafter preferred a revision before the Session court but failed to succeed there also and the revision was dismissed by Additional Sessions Judge/II FTC, Hardwar per judgment and order dated 29.06.2001 This is the third order impugned in this petition.

So far as the order of taking cognizance dated 22.12.1994 is concerned, the same was not challenged earlier by preferring any petition according to the provisions of the Code and further that in the criminal trial the charges against the petitioner and co-accused were framed on 27.11.2001 and which order has not been challenged by the petitioner. Even otherwise the allegation of the F.I.R. is definite that the act complained of was committed by the Halka Ganna Gram Sewak of the circle and store supervisor. Petitioner was posted as

Halka Ganna Gram Sewak and his involvement was prima facie established by the evidence collected in the investigation. Learned counsel for the petitioner drew attention to the report of the departmental proceedings, Annexure-3 and Annexure-4 to bring home his point of view that the charge of misconduct was not proved against the petitioner and that only the store supervisor Richhpal Singh was saddled with the responsibility of misconduct in relation to the act complained of by the complainant. The scope of departmental proceedings is not similar as that of criminal proceedings and merely because the petitioner was not found guilty of misconduct in departmental proceedings, at this stage it cannot be accepted that there was no prima facie evidence against the petitioner. Since the allegations of the F.I.R. were found to be supported by evidence collected in investigation there are no cogent reasons to accept that summoning order dated 22.12.1994 is bad in law. In other words the said order cannot legally be set aside.

So far as the controversy in regard to the provisions of section 197 of the Code is concerned it is of significance that there is nothing on record to show that the petitioner was a public servant who was removable from his office only with the section of the State government. Section 197 of the Code make it obvious that before the sanction can be invoked in the case of a public servant, two conditions must be satisfied, i.e. (1) that the accuse was a public servant who was removable from his office only with the sanction of the State government. Or the central government; and (2) he must be accused of an office alleged to have been committed by his while acting or purporting to act in the discharge of his official duty. In this case the second condition is no doubt fulfilled, but the first condition as stated above is not satisfied because the petitioner being a mera Halka Ganna Gram Sewak could be removed from his office by his head of the department or Regional Deputy Sugarcane Commissioner. Even in the case of other co-accused who was store supervisor the disciplinary authority was the Joint Sugarcane Commissioner as is evident from the sanction accorded In his case, Annexure-6. In view

thereof, the sanction to prosecute the petitioner as enjoined by section 197 of the Code was not required.

Learned counsel for the petitioner also pointed out that since sanction to prosecute co-accused Sri Richhpal Singh was accorded, the petitioner also deserves to be placed on same footing as being a public servant. Merely because a superior official or public servant was prosecuted after according sanction it would not mean that such a sanction was necessary to prosecute the petitioner. On this score also the case of the petitioner has no merit.

Learned counsel placed reliance on a decision of the single judge of the Allahabad High Court in the case of **Awdhesh Narain Rai v. State of U.P. {(1995(32), A.C.C.,page 339}** in support of his argument that prior sanction under section 197 of the Code is necessary when a public servant like a Gram Sewak is prosecuted for an offence. In the case before the High Court, the public servant was working as a Gram Sewak in the office of the Block Develoment Officer and in his case it was found that in the absence of prior sanction the trial Court could not have taken cognizance of the case against hi. It appear from the judgment that the question as to whether the public servant in question was removable from his office only with the sanction of the State government was not considered and therefore, the ratio of the decision of the reported case can not safely be applied to the facts of the instant case. In short the reported decision also does not support the cause of the petitioner.

For the above reasons the impugned orders passed by the learned A.C.J., Roorkee and the judgment and order passed by the learned Additional Sessions Judge/II F.T.C., Hardwar rejecting the contention of the petitioner are just and proper. The petition being devoid of merit deserves to be dismissed.

Petition is dismissed accordingly.

(Irshad Hussain,J.)

09.04.03./B.